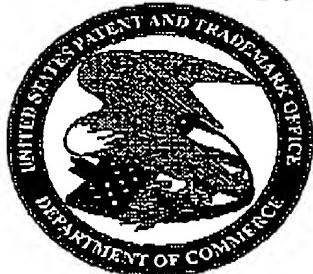


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Exhibit A



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DATE: February 6, 2004 CLIENT-MATTER No.: 22930-06067

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NAME	FAX NO.	PAGING NO.
Examiner Elaine L. Gott Group Art Unit 3627 Communication for Patents	(703) 872-5906	(703) 308-5391

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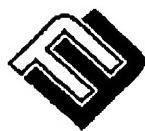
AMENDMENT A
Application: Toms Van Hout et al. Att. No.: 09/863,801 Filing Date: May 22, 2001 Title: ATTAINING PRODUCT INVENTORY GOALS FOR SALE IN A GROUP-BUYING ENVIRONMENT Atty. Dkt. No. 22930-06067

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FROM: Colleen Chien

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AMENDMENT A

Applicants: Tom Van Horn *et al.*
 App. No.: 09/863,801
 Filing Date: May 22, 2001
 Title: ATTAINING PRODUCT INVENTORY GROUPINGS FOR SALES IN A GROUP-BUYING ENVIRONMENT
 Atty. Dkt. No. 22930-06067

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Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

0001/PTO Rev. 10/95	U.S. Department of Commerce Patent and Trademark Office		Application Number 09/863,801
			Filing Date May 22, 2001
			First Named Inventor Tom Van Horn et al.
			Group Art Unit Number 3627
			Examiner Name Elaine L. Gort
Total Number of Pages in This Submission 16		Attorney Docket Number 22930-06067	

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REMARKS:

SIGNATURE OF ATTORNEY OR AGENT	
Signature: <i>Colleen Chien</i>	Dated: February 6, 2004
Attorney/Reg. No.: Colleen Chien, Reg. No. P-55,062	

CERTIFICATE OF FACSIMILE TRANSMISSION	
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22930/06067/SF/5114239.1

PAGE 7/49 * RCVD AT 9/21/2005 8:45:05 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/26 * DNI:2738300 * CSID:4152811350 * DURATION (mm:ss):10:28

FEE TRANSMITTAL for FY 2004		RECEIVED CENTRAL FAX CENTER SEP 7 2005																																																																																																																																																					
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The Commissioner is authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input checked="" type="checkbox"/> Charge all required fee(s) or any underpayment of fee(s) due under 37 CFR §1.16 or §1.17 during the pendency of this application. <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.		3. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Large Entity</th> <th>Small Entity</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Fee Code (\$)</td> <td>Fee Code (\$)</td> <td>Fee</td> <td></td> </tr> <tr> <td>1001 770</td> <td>2001 385</td> <td>Utility filing fee</td> <td></td> </tr> <tr> <td>1002 340</td> <td>2002 170</td> <td>Design filing fee</td> <td></td> </tr> <tr> <td>1003 530</td> <td>2003 265</td> <td>Plant filing fee</td> <td></td> </tr> <tr> <td>1004 770</td> <td>2004 385</td> <td>Reissue filing fee</td> <td></td> </tr> <tr> <td>1005 160</td> <td>2005 80</td> <td>Provisional filing fee</td> <td></td> </tr> <tr> <td colspan="2">SUBTOTAL (1) (\$ 0)</td> <td></td> <td></td> </tr> </tbody> </table>		Large Entity	Small Entity	Fee Description	Fee Paid	Fee Code (\$)	Fee Code (\$)	Fee		1001 770	2001 385	Utility filing fee		1002 340	2002 170	Design filing fee		1003 530	2003 265	Plant filing fee		1004 770	2004 385	Reissue filing fee		1005 160	2005 80	Provisional filing fee		SUBTOTAL (1) (\$ 0)																																																																																																																							
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SUBMITTED BY		Complete if applicable		
Name (Print/Type)	Colleen Chien	Registration No. (Attorney/Agent)	P-55,062	Telephone (415) 875-2319
Signature	<i>Chien</i>		Date	February 6, 2004

FEE TRANSMITTAL for FY 2004		<i>Complete if Known</i>	
Patent fees are subject to annual revision.		Application Number	09/863,801
		Filing Date	May 22, 2001
		First Named Inventor	Tom Van Horn et al.
		Examiner Name	Elaine L. Gort
		Art Unit	3627
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		SEP 21 2005	
TOTAL AMOUNT OF PAYMENT (\$ 476.00)		Attorney Docket No. 22930-06067	

METHOD OF PAYMENT (check all that apply)				FEE CALCULATION (continued)																																																											
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SUBMITTED BY <i>Colleen Chien</i> Complete (if applicable)																																																															
Name (Print/Type)	Colleen Chien	Registration No. (Attorney/Agent)	P-55,062	Telephone (415) 875-2319																																																											
Signature	<i>Colleen</i>	Date	February 6, 2004																																																												

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SEP 21 2005

APPLICATION NO.: 09/863,801

FILING DATE: May 22, 2001

TITLE: ATTAINING PRODUCT INVENTORY GROUPINGS FOR SALES IN A GROUP-BUYING ENVIRONMENT

EXAMINER: Elaine L. Gort

GROUP ART UNIT: 3627

ATTY. DKT. NO.: 22930-06067

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I hereby certify that this correspondence, including the enclosures identified below, is being transmitted via facsimile on the date shown below to: Examiner Elaine L. Gort, Group Art Unit 3627, Commissioner for Patents, at the facsimile number of (703) 872-9306.

Dated: February 6, 2004 By: 
Colleen Chien, Reg. No. P-55,062

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AMENDMENT A

SIR:

In response to the Office Action mailed October 22, 2003, please amend the application as follows:

PATENT**IN THE CLAIMS:**

Please amend the claims as follows.

1. (Currently Amended) A method for sourcing a featured item for an on-line group-buying sale, comprising:
 - communicating to a supplier a featured item quantity and a featured item time reservation;
 - receiving the supplier's consent to reserve the featured item quantity and for the negotiated featured item time reservation for sale in the on-line group-buying sale;
 - conducting an on-line group-buying sale for the featured item during the featured item time reservation, selling at least a portion of the featured item quantity to one or more buyers; and
 - ~~sending shipment instructions to the supplier regarding supplying the featured items sold in the on-line group-buying sale to one or more buyers by instructing the supplier to provide the items to one or more buyers.~~
2. (Original) The method of claim 1, further comprising:
 - executing a binding agreement with the supplier regarding the featured item quantity and the featured item time reservation, wherein the binding agreement requires the supplier to retain the featured item quantity for the featured item time reservation.
3. (Original) The method of claim 2, further comprising:
 - providing the supplier with consideration in exchange for the supplier's execution of the binding agreement.
4. (Original) The method of claim 3 wherein the consideration is at least one of a reserve price, an agreement to reserve another featured item, and a deposit.

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5. (Original) The method of claim 1, further comprising:
communicating to the supplier payment terms regarding the featured item to be sold
during the on-line group-buying sale before conducting the on-line group-
buying sale; and
paying the supplier for a number of featured items sold during the on-line group-
buying sale.

6. (Currently Amended) A method for sourcing a featured item for an on-line group-
buying sale, comprising:
receiving from a seller a featured item quantity and a featured item time reservation;
negotiating with the seller to determine a negotiated featured item quantity and a
negotiated featured item time reservation;
executing a binding agreement with the seller regarding the negotiated featured item
quantity and the negotiated featured item time reservation, wherein the
binding agreement requires the seller to reserve retention of the negotiated
featured item quantity for the negotiated featured item time reservation for
sale in the on-line group buying sale;
receiving a confirmation of the sale of a featured item in an on-line group-buying sale;
and
supplying receiving shipment instructions from the seller regarding a featured
item sold during the on-line group-buying sale responsive to instructions from the
seller.

7. (Original) The method of claim 6, further comprising:
retrieving the number of featured items sold during the on-line group-buying sale
from a warehouse; and
packaging the number of featured items sold during the on-line group-buying sale for
shipment to buyers.

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8. (Original) The method of claim 6, further comprising:

receiving consideration from the seller in exchange for executing the binding agreement.

9. (Original) The method of claim 8 wherein the consideration comprises at least one of a reserve price, an agreement to reserve another featured item, and a deposit.

10-11. (Cancelled)

12. (Original) The method of claim 6, further comprising:

communicating to the seller payment terms regarding the featured items to be sold during the on-line group-buying sale.

13. (Withdrawn) A computing system for sourcing a featured item for an on-line group-buying sale, comprising:

a supplier communications module configured to send a supplier a featured item quantity and a featured item time reservation;

a virtual inventory module configured to receive the supplier's consent to reserve a negotiated featured item quantity and a negotiated featured item time reservation; and

an on-line group-buying mechanism configured to conduct at least one on-line group-buying sale during the negotiated featured item time reservation, selling at least a portion of the negotiated featured item quantity to one or more buyers.

14. (Withdrawn) The system of claim 13 wherein the virtual inventor module is further configured to receive a binding agreement from the supplier regarding the negotiated featured item quantity and the negotiated featured item time reservation, wherein the binding agreement requires the supplier to retain the negotiated featured item quantity for the negotiated featured item time reservation.

15. (Withdrawn) The system of claim 13, further comprising:

a data repository configured to retain data regarding the negotiated featured item quantity and the negotiated featured item time reservation.

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16. (Withdrawn) The system of claim 13 wherein the supplier communications module is further configured to send shipment instructions to the supplier regarding a number of featured items sold during the on-line group-buying sale.

17. (Withdrawn) The system of claim 13 wherein the supplier communications module is further configured to provide the supplier with data regarding the seller's consideration for obtaining the supplier's consent to be contractually bound to retain the negotiated featured item quantity for the negotiated time duration.

18. (Withdrawn) The system of claim 17 wherein the consideration data comprises at least one of a reserve price, an agreement to reserve another featured item, and a deposit.

19. (Withdrawn) The system of claim 13 wherein the negotiated featured item quantity equals the featured item quantity.

20. (Withdrawn) The system of claim 13 wherein the negotiated feature item time reservation equals the featured item time reservation.

Kindly add the following new claims:

21. (New) The method of claim 1 wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

22. (New) The method of claim 6 wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

23. (New) A method for sourcing an item for an on-line group-buying sale, the method comprising:

reserving a specified quantity of the item for a specified period of time for sale in the on-line group-buying sale with a supplier of the item;
style="padding-left: 40px;">selling a plurality of the items during the specified period of time to a plurality of buyers in the on-line group-buying sale; and

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supplying the items bought by buyers in the on-line group-buying sale to the buyers by instructing the supplier to provide the featured items to the buyers.

24. (New) The method of claim 23 wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

25. (New) The method of claim 23 wherein reserving a specified quantity of the item during a specified period of time further comprises forming an agreement with the supplier in which consideration is provided to the supplier in exchange for the supplier's commitment to reserve the specified quantity of the item during the specified period time.

26. (New) The method of claim 23 further comprising reserving the specified quantity of the item at a specified price.

27. (New) The method of claim 23 further comprising the step of using a computer-implemented system to reserve the specified quantity of the item during the specified period of time with the supplier.

28. (New) The method of claim 27 further comprising the step of using the computer-implemented system to compensate the supplier for the items supplied by the supplier to buyers in the on-line group-buying sale.

29. (New) The method of claim 23 further comprising the step of forming an option contract with a supplier of the item, the option for the seller to purchase the specified quantity of the item for the specified period of time and expiring after an option period.

30. (New) The method of claim 29, further comprising wherein the featured item is sold in the on-line group-buying sale at the same price to all buyers of the featured item.

31. (New) A method of doing business, comprising:

forming an option contract between a supplier of an item and a seller of the item, the option for the seller to purchase a quantity of the items and expiring after an option period; and

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forming a group sale of the item between the seller and a plurality of buyers during the option period wherein all of the buyers pay the same price for the items, wherein the seller provides to the supplier delivery instructions for delivering the items directly from the supplier to the buyers.

32. (New) The method of claim 31, wherein the group sale comprises an on-line group-buying sale

33. (New) A method of selling quantities of an item, the method comprising:
forming an option contract to obtain an option to purchase a quantity of an item during an option period;
receiving, during the option period, individual offers from buyers each for an individual quantity of the item at an individual unit price;
aggregating individual offers from the buyers to form an aggregated offer having an aggregated quantity of the individual quantities of the offers;
responsive to an aggregated offer for a quantity of the item above a starting quantity, lowering the unit price of the item below a starting unit price; and
accepting a final aggregated offer for a final quantity of the item at a final unit price, wherein accepting the final aggregated offer automatically executes contracts to sell the item to all the buyers whose offers are reflected in the final aggregated offer, wherein the contracts with the buyers are at the same final unit price and are for the individual quantities requested in the buyers' individual offers.

34. (New) The method of claim 33 further comprising the steps of:
receiving individual offers from buyers in an on-line group buying sale; and
accepting a final aggregated offer for a final quantity of the item, thereby consummating an on-line group buying sale.

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35. (New) The method of claim 33 further comprising the step of using a computer-implemented system to execute contracts to sell the item to all the buyers whose offers are reflected in the final aggregated offer.

36. (New) A combination of contractual relations, comprising:

an option contract between a seller and a supplier granting the seller a right to purchase a reserved quantity of items from the supplier during an option period; and

a plurality of individual sales contracts between the seller and a plurality of respective, individual buyers, each contract for the sale of a portion of the reserved quantity of the items, wherein the plurality of sales contracts result from an on-line group-buying sale from the seller to the buyers, all of the individual sale contracts at the same unit price, the unit price determined based on the aggregate quantity of items sold in the plurality of sales contracts.

PATENT**REMARKS**

Claims 1-9, 12 and 21-36 are pending in this application. In this Response, Applicants have canceled claims 10-11, added claims 21-36, and confirm the election to withdraw claims 13-20 from further consideration made during the Examiner's telephone conversation with Thomas Ewing on June 9, 2003.

The Examiner rejected claims 1-12 under 35 U.S.C. 103 as being unpatentable over Walker in view of the Second Restatement of Contracts ("the Restatement"). Applicants traverse these rejections as applied to pending claims 1-12, and if applied to them, to claims 21-30 because the references in combination do not disclose or suggest the invention as claimed. Furthermore, there is no suggestion to combine the Restatement with Walker to achieve the patented invention. For these reasons, the claims, as currently presented, are patentable over Walker and the Restatement.

Each of pending claims 1-9, 12, and 21-30 recite a method "for sourcing a featured item [or item] for an on-line group-buying sale." (See, e.g. independent claims 1, 6, and 23 *supra*.) To accomplish this sourcing, claim 1 and 6 recite, "to reserve the featured item quantity for the featured item time reservation for sale in the on-line group-buying sale," and claim 23 recites "reserving a specified quantity of the item for a specified period of time for sale in the on-line group-buying sale." Reserving an item for sale in an on-line group-buying sale as claimed beneficially gives the seller the flexibility to purchase the items only if a sale is successful, and further to purchase only the quantity of items sold during the group buy, thereby avoiding the purchase of excess items. This allows the seller to manage his inventory when the outcome of a group-buying sale is unknown and uncertain. However, neither Walker nor the Restatement disclose or suggest the claimed limitations.

Walker discloses "an aggregate conditional purchase offer (CPO) management system for receiving and processing CPOs from buyers for one or more goods or services". (Abstract) Directed towards the management of offers, Walker is generally unconcerned with how the

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inventory of goods is achieved, and thus, it contains little if any description of "sourcing" an on-line group-buying sale. At best, Walker provides:

"a CPO rule for a given agency-based airline can specify that the airline will accept any aggregate CPO for travel between Newark, N.J. (EWR) and Orlando, Fla. (MCO) during the month of October, 1997, provided that (i) the customer travels between Tuesday and Thursday, (ii) the tickets are booked within 21 days of departure, (iii) the price is at least \$165 per ticket, (iv) K-class inventory is available on all flight segments of the customer's itinerary, and (v) there are at least two (2) passengers travelling together." (emphasis added) (Walker, 7:22-31)

This excerpt merely describes a rule that an airline would use to determine what offers an airline will accept, not how the airline will source the tickets it sells. As the highlighted section makes clear, the "CPO rule" does not require "reserving" items for an on-line group-buying sale as claimed. Quite the contrary, an offer is only accepted if "inventory is available" at the time of booking. There is simply no discussion or mention in Walker of how this inventory is obtained, and there is no hint that it would be obtained by a supplier "reserving" an item for subsequent sale as claimed.

The Examiner thus attempts to rely on the Restatement of Contracts to overcome this deficiency of Walker. But this reliance is misplaced. The Restatement, as reproduced by Examiner, contains little more than the legal definition of an option contract and illustrations of option contracts. The Restatement discloses "an option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer".

(§25) The passage cited by the Examiner states:

"A promises B under seal or in return for \$100 paid or promise by B that A will sell B 100 shares of stock in a specified corporation for \$5,000 at any time within thirty days that B selects. There is an option contract under which B has an option." (Page 73, Illustration 1.)

This passage describes the sale of an option to buy stock, rather than stock itself, from A to B. But it does not address how A will source the stock or suggest that B is using the option contract to source a sale to a third party C. Applicants have reviewed the entire Restatement

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excerpt provided, and find no mention of "reserving" an item for subsequent sale as claimed, or any option contract in which B uses the option to reserve a supply of items for sale to a third party C.

Thus, it follows that the combination of Walker and the Restatement does not disclose or suggest the claimed invention. As discussed above, there is scant discussion in either reference of how to source a sale. In Walker, buyers purchase airline tickets from sellers using "conditional purchase offer[s]". In the Restatement, "A" (the buyer) receives an option from "B" (the seller) to purchase stock at a set price during a set period of time. Even under the most generous interpretation, the combination of Walker and the Restatement merely results in Walker's buyers obtaining options from the airline to purchase an airline ticket. However, there is no suggestion or hint that options be used to source the tickets in the first place. Thus, the references, alone or in combination, do not disclose or suggest the claimed invention.

Incidentally, even assuming *arguendo* that the combination of Walker and the Restatement did overcome these problems, there is no suggestion or motivation that Walker and the Restatement should be combined to meet the claimed invention in the first place. To establish a *prima facie* case of obviousness, the Examiner must show a motivation that is specific enough to modify the references to result in the claimed invention. A general statement of a desirable objective cannot by itself provide the required specific motivation. (See, e.g. *In re Anita Dembiczaik*, 175 F.3d 994, 999 (Fed. Cir. 1999) (emphasizing that the evidence of a "suggestion, teaching, or motivation to combine...must be *clear and particular.*" (emphasis added))). Here, the Examiner's alleged "motivation" to "assure that the supply is available for the buyers/customers making purchases on the on-line group buying system" (Office Action, p. 4) is simply too general and vague to suggest the specific combination of Walker with the Restatement in a way that results in the claimed invention. This is because the desired "assurance" could conceivably be reached through any number of means – for instance, stockpiling, vertical integration, long-term supply contracts, or selling only what's in stock, to name just a few. Thus, nothing in the references themselves or in the alleged "motivation" particularly suggests

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the specific use of an option to provide the reserved quantity of items as claimed. Given the absence of such a suggestion in the references or in the motivation, the combination can only spring from one place: the Examiner's reconstruction of the invention having been instructed by the teachings of the present application, since no where else is there any basis for combining the references as claimed.

Applicants also traverse Examiner's rejection of claims 1-12 (and by extension, claims 21-30, 32, 34, and 36) as being unpatentable over Peterson in view of the Restatement. The references in combination simply do not disclose or suggest the invention as claimed.

Each of the pending claims recite "on-line group-buying." (See, e.g. independent claims 1, 6, and 23 *supra*.) Neither the Restatement nor Peterson disclose this element. As described above, the Restatement, a legal treatise, merely contains a legal description of option contracts. There is no mention of group buying, much less "on-line group-buying." Neither does Peterson disclose group buying or "on-line group-buying" as claimed. At best, Peterson discloses a "Buying Group Inventory Network." (19:63). Although "inventory information [is] shared by the Buying Group Members" (19:67-20:1), there is no disclosure that the members together buy items in an "on-line group-buying" sale as claimed. In other words: the mere happenstance that Peterson uses the words "Buying Group" does not mean that he discloses "online group buying" as claimed.

The combination of Peterson and the Restatement does not create a means to fill this deficiency – the purchase of items by a group of buyers as claimed is not disclosed by Peterson, the Restatement, or their combination. There is no mention or suggestion in either of the references that buying happens except for conventionally, as carried out by individuals; e.g. in the Restatement, "B" sells an option to "A" (Page 73, Illustration 1); and in Peterson, "a first vendor agrees to sell to a second vendor". (Abstract) Combining these two references does not produce "on-line group-buying" as claimed. At best the combination merely suggests that the first vendor sell an "option" to the second vendor. This is, quite clearly, not the claimed invention.

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Accordingly, Applicants submit that the claims are patentably distinct over the cited art.

Consideration of this application and the early allowance of all claims herein is requested.

Should the Examiner wish to discuss the above amendments and remarks, or if the Examiner believes that for any reason direct contact with Applicants' representative would help to advance the prosecution of this case to finality, the Examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,
TOM VAN HORN *et al.*

Dated: February 6 2004

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